

# **ODEI “Lowdown” – The True Facts or Relevant Information**



## **SUBJECT: Federal Sector Alternative Dispute Resolution**

## **APPLICABILITY: Applicants for, or employees in, Title 5 and Title 32 technician status**

ADR is a process in which a third party neutral assists the disputants in reaching an amicable resolution through the use of various techniques. ADR describes a variety of approaches to resolve conflict which avoid the cost, delay, and unpredictability of the traditional adjudicatory processes while at the same time improving workplace communication and morale.

In 1990, the Administrative Dispute Resolution Act (ADRA) required each federal agency to adopt a policy on ADR use. In 1996, ADRA was reenacted as the Administrative Dispute Resolution Act of 1996 (ADR Act). In 2000, the Equal Employment Opportunity Commission (EEOC) required all federal agencies to establish or make available an ADR program during the pre-complaint and formal complaint stages of the EEO process. Additionally, EEOCs regulation, 29 C.F.R. § 1614.603, requires agencies to make reasonable efforts to voluntarily settle EEO discrimination complaints as early as possible in, and throughout, the administrative process.

This information is designed to help federal employees and applicants better understand ADR as it is used to resolve discrimination complaints. In addition to basic information on ADR, links are provided to many other federal government programs and private organizations using a variety of ADR techniques to resolve workplace disputes.

The use of alternative dispute resolution (ADR) techniques by federal agencies has increased dramatically in the equal employment opportunity (EEO) process. In 1998, the Equal Employment Opportunity Commission's ADR Study of Federal Sector EEO ADR Programs reported that more than half of the federal agencies surveyed had active ADR programs. As

of January 1, 2000, all federal agencies were required to establish or make available an ADR program during the pre-complaint and formal complaint stages of the EEO process. See [29 C.F.R. 1614.102\(b\)\(2\)](#). In order to build on the success of ADR programs in the federal sector, it is vital for complainants and management officials to understand and participate in the ADR process.

## **What is ADR?**

ADR generally refers to a continuum of processes and approaches that are designed to resolve disputes in a manner which avoids the cost, delay, and unpredictability of more traditional adversarial and adjudicatory processes, such as, litigation, hearings, and appeals. Numerous types of ADR techniques exist, including mediation, facilitation, fact finding, early neutral evaluation, the use of an Ombudsman, settlement conferences, and peer review. [Chapter 3 of the EEO Management Directive \(MD\)-110](#) provides a detailed description of each of these techniques.

Every agency has the discretion to create its own unique ADR program that is best suited for their particular office environment. Mediation has been the most popular form of ADR offered by federal agencies in the EEO process. Over 87 percent of the agencies who responded to EEOC's 1998 ADR survey stated that mediation is their primary ADR technique. The EEOC has encouraged federal agencies to experiment with other forms of ADR, including a combination of ADR techniques. Many agencies have established pilot programs to decrease the processing time of EEO complaints and improve the overall satisfaction of the participants.

## **Why is ADR beneficial?**

Agencies and complainants have realized that utilizing ADR during the EEO process has many advantages. ADR offers the parties the opportunity for an early, informal resolution of disputes in a mutually-satisfactory fashion. Rather than receiving a decision from an unknown third party, such as an administrative judge, the parties have the opportunity to write their own agreement in a manner which satisfies both of their needs. Not only does ADR provide a Win-Win resolution for the parties, but it also usually costs less and uses fewer resources than traditional administrative or adjudicative processes. For example, complainants could avoid costly attorney's fees and the agency could minimize the use of investigators, legal staff, official time, and court reporter fees. Moreover, since the parties are using ADR during the earliest stages of the EEO process, a resolution will avoid numerous years of litigation in administrative and court proceedings. As a result, the complainant's working relationship can improve rather than deteriorate due to ongoing legal battles, and the overall employee morale can be enhanced when the agency is viewed as open-minded and cooperative in seeking to resolve EEO disputes.

## **SCNG ODEI Contact Information**

If you are a Federal Employee or job applicant and believe, you have been subjected to unlawful discrimination, harassment or retaliation on the basis of **race, color, religion, national origin, genetic information, sex, (including pregnancy, gender identity, sexual orientation), age (40 and over), or disability, contact the Office of Diversity, Equity, and Inclusion.**

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